

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned On Briefs June 12, 2008

**FRANK E. TEASLEY v. TENNESSEE BOARD OF PROBATION AND
PAROLE**

**Direct Appeal from the Chancery Court for Davidson County
No. 06-18-II Carol L. McCoy, Chancellor**

No. M2007-01173-COA-R3-CV - Filed September 16, 2008

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Vacated in part;
Affirmed in Part; and Remanded**

DAVID R. FARMER, J., delivered the opinion of the court, in which ALAN E. HIGHERS, P.J., W.S., and HOLLY M. KIRBY, J., joined.

Frank E. Teasley, *Pro se*.

Robert E. Cooper, Jr., Attorney General and Reporter, Michael E. Moore, Solicitor General and Joshua D. Baker, Assistant Attorney General, for the appellee, Tennessee Board of Probation and Parole.

MEMORANDUM OPINION¹

The trial court dismissed Petitioner's writ for certiorari on the grounds that it was untimely filed and insufficiently affirmed where it was not notarized. We vacate dismissal based on the limitations period and affirm based on the lack of sworn, notarized affirmation.

¹ Rule 10 of the Rules of the Court of Appeals of Tennessee provides:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

Petitioner/Appellant Frank E. Teasley (Mr. Teasley) is an inmate in the custody of the Tennessee Department of Correction (“TDOC”). He is housed at the Northeast Correctional Complex in Mountain City, Tennessee, serving consecutive sentences for robbery, sexual battery, and aggravated kidnapping. Defendant Tennessee Board of Probation and Parole (“the Board”) denied Mr. Teasley parole following a hearing on July 14, 2005. Mr. Teasley appealed the Board’s determination on August 7, 2005. The Board denied Mr. Teasley’s request for appeal by letter dated October 20, 2005. Mr. Teasley’s petition for writ of certiorari was filed in the Chancery Court for Davidson County on January 4, 2006. The Board filed a motion to dismiss in September 2006, asserting that the trial court lacked subject matter jurisdiction where Mr. Teasley’s petition was not verified by notarized sworn affidavit and where it was not filed within the sixty-day statutory filing period. In his response to the Board’s motion, Mr. Teasley asserted that his petition was timely filed where he did not receive notice of the denial of his appeal until October 31, 2005, and where he placed his petition to the trial court in the prison’s internal mailing system on December 20, 2005. Mr. Teasley asserted that, because he did not receive notice of denial until October 31, the statutory period for filing his petition did not expire until December 31, 2005. He further asserted that the fact that the chancery court filed his petition on January 4, 2006, demonstrated that it was deposited in the prison mail room within the sixty-day statutory period. Mr. Teasley additionally asserted that, as a *pro se* litigant, he should not be denied review because of a minor defect in his petition for writ of certiorari. The trial court granted the Board’s motion to dismiss by final order entered in March 2007, and Mr. Teasley filed a notice of appeal to this Court.

Issues Presented

Mr. Teasley presents the following issues for our review:

- (1) Whether the Chancery Court erred in holding that the petition was not timely filed.
- (2) Whether the Chancery Court erred in holding that the petitioner sought certiorari review of the Board’s parole decision when, in fact, the petitioner sought certiorari review of the Board’s use of false information against him in his parole hearing.

Standard of Review

The issues presented on appeal are questions of law. We review questions of law *de novo*, with no presumption of correctness afforded to the conclusions of the trial court. *Taylor v. Fezell*, 158 S.W.3d 352, 357 (Tenn. 2005).

The procedural vehicle through which prisoners may seek review of decisions made by administrative boards such as disciplinary boards and parole boards is the common-law writ of certiorari. *Willis v. Tennessee Dep’t of Corr.*, 113 S.W.3d 706, 712 (Tenn. 2003). In seeking the writ, one must comply with both constitutional and statutory provisions. *E.g., Johns v. Dalton*, No.

M2005-01784-COA-R3-CV, 2007 WL 1585159, at *2 (Tenn. Ct. App. May 31, 2007)(*no perm. app. filed*). The Tennessee Constitution provides that

[t]he Judges or Justices of the Inferior Courts of Law and Equity, shall have power in all civil cases, to issue writs of certiorari to remove any cause or the transcript of the record thereof, from any inferior jurisdiction, into such court of law, on sufficient cause, supported by oath or affirmation.

Tenn. Const. art. VI, § 10. The Tennessee Code similarly provides:

The judges of the inferior courts of law have the power, in all civil cases, to issue writs of certiorari to remove any cause or transcript thereof from any inferior jurisdiction, on sufficient cause, supported by oath or affirmation.

Tenn. Code Ann. § 27-8-104(a) (2000). The Code further provides:

The petition for certiorari may be sworn to before the clerk of the circuit court, the judge, any judge of the court of general sessions, or a notary public, and shall state that it is the first application for the writ.

Tenn. Code Ann. § 27-8-106 (2000).

Analysis

We first turn to whether the trial court erred in dismissing Mr. Teasley's petition on the grounds that it was untimely filed. We begin our review of this issue by noting that, as Mr. Teasley asserts, the Board's October 2005 letter denying his appeal of the Board's parole decision contains a notation that it was "received" on October 31, 2005. Mr. Teasley asserts that, accordingly, he had until December 31 to submit his petition to the prison mail room. He argues that he placed it in the internal prison mail on December 20, 2005. The Board, on the other hand, argues that the sixty-day statutory period began to run on October 20, 2005, the date on which Mr. Teasley's appeal to the Board was denied. The Board asserts that, since Mr. Teasley's petition for writ of certiorari was dated December 20, 2005, sixty-one days after the appeal was denied, it was filed beyond the statutory period regardless of when it was received in the prison mail room. The trial court determined that, assuming the statutory period began to run on October 31, Mr. Teasley's petition was filed late where it was stamped received in the prison mail room on January 3.

Upon review of the record and the briefs submitted to this Court, we note that the Board does not dispute that Mr. Teasley did not receive notice that it had denied his appeal until October 31, 2005. We further observe that both the trial court's order and the Board's brief contain inconsistent dates. In its March 2007 order, the trial court first states that Mr. Teasley's petition for writ of certiorari "was received by the facility's mail room on January 3, 2005, between 10 a.m. and 11 a.m." The order later states that Mr. Teasley's "initial filing was stamped as 'Received Jan. 3, 2006'

by the TDOC's facility's mail room." The date-stamped envelope is not in the record before this Court, however. Additionally, in its brief to this Court, the Board states:

At a hearing held on July 14, 2006, the Respondent denied the Petitioner parole due to the seriousness of the offense. The Petitioner appealed this decision, but his appeal was denied on October 20, 2005. The Petitioner filed a petition for the common law writ of certiorari with the trial court on January 4, 2007.

The Board also states in its brief, "[a]dditionally, the trial court stated that the envelope containing the petition bore a stamp which showed that it was not submitted to the prison mailroom until January 3, 2007, seventy-five (75) days after the appeal was denied."

We further observe that, as Mr. Teasley asserts, his petition was stamped filed in the Chancery Court for Davidson County on January 4, 2006. Thus, we find it somewhat unlikely that it was not received in the TDOC's Mountain City facility mail room until January 3. In making this observation, we note that other correspondence sent from Mr. Teasley to this Court in Nashville was stamped received by the mail room in Mountain City on January 23, 2008, was postmarked by the USPS on January 24, 2008, and was stamped received by the clerk of the court on January 28, 2008.

In light of the inconsistencies in the record, including the trial court's order, and in the Board's brief to this Court, we vacate the trial court's order insofar as it dismisses Mr. Teasley's petition based on the sixty-day limitations period. However, in this case, it is undisputed that the petition filed by Mr. Teasley failed to comply with constitutional and statutory requirements where it undisputedly was not notarized and failed to state that it is the first application. This Court has held that failure to comply with these two statutory requirements is a proper basis for dismissal by the trial court. *E.g., Johns v. Dalton*, 2007 WL 1585159, at *2 (citations omitted). Additionally, the fact that Mr. Teasley is proceeding *pro se* does not excuse him from complying with the statutorily prescribed procedural requirements. *See id.* (citations omitted). Mr. Teasley does not argue in his brief to this Court that the trial court erred by determining that his petition was insufficiently verified where it was not notarized, moreover, and we affirm dismissal of Mr. Teasley's petition on this basis.

We next turn to Mr. Teasley's assertion that the trial court erred in holding that he sought review of the Board's parole decision when, in fact, he sought certiorari review of the Board's use of false information against him in his parole hearing. We must disagree with Mr. Teasley's assertion. Although Mr. Teasley's contention that he was wrongly denied parole on the basis of allegedly incorrect information constitutes his argument that the Board's decision should be overturned, Mr. Teasley's appeal is, in fact, from the Board's decision denying him parole.

Holding

In light of the foregoing, the judgment of the trial court granting the Board's motion to dismiss is vacated in part and affirmed in part. Costs of this appeal are taxed one-half to the

Appellant, Frank E. Teasley, and one-half to the Appellee, the Tennessee Board of Probation and Parole.

DAVID R. FARMER, JUDGE